

040728ESD.TXT

EMPLOYMENT SECURITY DEPARTMENT
STATE OF WASHINGTON

TRANSCRIPT OF PROCEEDINGS
of
UNEMPLOYMENT INSURANCE RULES
STAKEHOLDER MEETING

Date and Location

040728ESD.TXT
July 28, 2004 Employment Security Department
Wednesday, 2:00 p.m. P.O. Box 9046
 Olympia, Washington 98506

Manager;
also

BE IT REMEMBERED, that an Unemployment Insurance Rules stakeholder meeting was held at the location and time as set forth above. The Employment Security Department was represented by CHERYL METCALF, UI Policy and Training and KAREN MALO, Program Coordinator; and SUSAN HARRIS was present.

Reported by:
Marcie L. Johnson, CCR
(License #2744)

EXCEL COURT REPORTING
16022-17th Avenue Court East
Tacoma, WA 98445-3310
(253) 536-5824

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PROCEEDINGS

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3 MS. METCALF: Thank you all for coming. I wanted to go
4 over a little bit of housekeeping with you first. The rest
5 rooms, should you need them, are down the hall. The men's

6 rest room is straight down the hall on the left. And the
7 women's is down the hall to the right and around the corner.
8 They're across from each other.

9 There's a cafeteria on the first floor. It's mostly
10 just vending machines, but there's a cafeteria down there if
11 you would like something to drink. We don't expect to be
12 here a long time.

13 My name is Cheryl Metcalf. I'm the UI policy manager.
14 And to my right is Karen Malo. And Karen Malo has the lead
15 on these rules, so she's the one that you'll be hearing
16 from. And here's Susan Harris, she usually works closely
17 with Juani ta on these rules.

18 As I was explaining earlier, Juani ta is sitting this
19 one out. You usually see Juani ta Myers here. She's very
20 busy still working on the legislative change rules. So
21 Karen's handling this.

22 On my left is Alicia Cardenas-Short. She is also part
23 of our policy team. She's our language specialist. She
24 does all our interpretations and other policy matters.
25 So that's who we are. Could we go around the room and

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1 introduce -- oh, I'm sorry Marcie.

2 This is Marcie Johnson. Marcie Johnson's a court
3 reporter, and we have her here to record everything you say.
4 It will be part of the official record, and it will all be
5 taken into consideration as we go through this process.

6 So as you speak, if you could, we would like to have
7 you introduce yourselves, but also when you comments if you
8 could say your name for the record so Marcie can get it
9 down.

10 Do you want to start?

11 MR. JOHNSON: Yeah. Hi, I'm Mark Johnson with the
12 National Federation of Independent Business.

13 MR. NEAS: I'm Bruce Neas. I'm an attorney with
14 Columbia Legal Services here in Olympia.

15 MS. STOHL: Ilene Stohl with the Washington State
16 Coalition Against Domestic Violence.

17 MS. MANKOWSKI: Jenny Mankowski. I'm a law student at
18 Seattle University.

19 MR. WARD: I'm David Ward. I'm a staff attorney with
20 the Unemployment Law Project in Seattle.

21 MS. CRONE: I'm Pam Crone, and I'm here on behalf of
22 the Northwest Women's Law Center and the Washington State
23 Coalition Against Domestic Violence.

24 MS. MARANVILLE: I'm Debbie Maranville. I direct the
25 unemployment compensation clinic at the University of

1 Washington.

2 MS. METCALF: Thank you. I just wanted to give you a
3 little background on this. For several years, many years
4 maybe, legislation was presented on domestic violence
5 involving unemployment insurance benefits. And in 2002
6 legislation did pass after several tries, although it would
7 cost individuals practically more because of domestic
8 violence or stalking.

9 And that law was effective on June 13 of '02, and on
10 June 19 of '02 our agency listed some temporary guidelines
11 on how to process cases as far as unemployment goes. And
12 the hearing process was then started afterwards. And we had
13 our first stakeholder meeting in December of '02. And it

14 then kind of took a backseat to all the legislation that
15 finally became effective this January, which was massive
16 revision of unemployment insurance. And it took everybody's
17 complete time and attention. So now we can take a breath,
18 and we can get back to this, which is a very serious matter,
19 and get the rules done.

20 I want to make sure that everybody knows that we have
21 implemented the law from the day it passed, and we are just
22 now getting to the finalization of the rules. So that's
23 about all I wanted to tell you on the background.

24 Did everybody get a chance to review the rules prior to
25 coming here?

1 And we really want you to know your efforts are
2 important. Karen will consider all comments. She'll look
3 at the transcript when you're finished and any written
4 comments that come in, and then we'll talk about the next
5 steps. But everything will be considered. And then based
6 on what kind of comments and how detailed they are, we will
7 determine if more sessions are needed or whether we can come
8 out with something and have an official rules hearing.

9 With that, we'll turn it over to Karen.

10 MS. MALO: And Susan and I have sort of thrown this
11 together. You have to bear with us because we're new at
12 this.

13 The statute that was implemented in June of 2002 said
14 that an individual shall not be considered to have left work
15 voluntarily without good cause when the separation was
16 necessary to protect the claimant or the claimant's
17 immediate family members from domestic violence, as defined

18 in RCW 26.50.010 or stalking as defined in RCW 9A.46.110.

19 So we have proposed rules here. And we have two new
20 sections and one that is amended. And the first section was
21 WAC 192-150, Leaving work due to domestic violence or
22 stalking. And what we have done is incorporated the
23 definitions from the two statutes that are identified in the
24 law. The first one being under Title 26, which is domestic
25 relations and prevention of. And the second one, 9A, is

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1 Washington Criminal Code for stalking.

2 We identified what "immediate family" means. And this
3 is an Employment Security WAC, and it identified a very
4 narrow definition of basically who the victim can be. The

5 individual left work to care, protect themselves or their
6 immediate family from domestic violence or stalking. So the
7 very first "immediate family" definition we have identified
8 here.

9 The second definition is a broad definition of who the
10 perpetrator may be, family or household member. And we took
11 that from RCW 26.50.010(b).

12 We said that stalking can be committed against you or
13 your immediate family by any person.

14 The next subsection, that you are not required to
15 exhaust reasonable alternatives prior to leaving work. And
16 we've identified that they don't have to provide notice,
17 adequate notice, or try to preserve their job like other
18 people to establish good cause when they leave work for
19 other reasons.

20 And this came from our other stakeholder meetings that
21 we had. Some of these interpretations or definitions and

22 subsections came from the other stakeholder meeting that we
23 had December, I think, of '02.

24 The next one is the following factors will be
25 considered in evaluating whether they had good cause to

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1 I leave work and that domestic violence was the primary reason
2 that your separation was necessary, which means, well, that
3 it was necessary for you to leave and then that it was
4 because of the domestic violence.

5 That's the very first WAC that we're proposing. Are
6 there comments that you would like to discuss?

7 Okay, Mark.

8 MR. JOHNSON: Just some background information. House

9 Bill 1248. Do you recall what the fiscal note was on that
10 particular piece of legislation?

11 MS. MALO: On 12?

12 MR. JOHNSON: 1248.

13 MS. METCALF: No, Mark. But we can get that
14 information.

15 MR. JOHNSON: Does anybody else remember? Pam?

16 MS. CRONE: I don't remember.

17 MR. JOHNSON: Was it like \$150,000?

18 MS. CRONE: I don't remember what it was.

19 MR. JOHNSON: Let me follow up with that too.

20 How many people since -- the bill passed in '02,
21 correct?

22 MS. MALO: Correct.

23 MR. JOHNSON: And it was instituted as soon as the bill
24 became effective?

25 MS. MALO: Correct.

1 MR. JOHNSON: I'm thinking July 1 it probably went into
2 effect, or was it immediately?

3 MS. MALO: It was immediately.

4 MR. JOHNSON: Immediately.

5 MS. MALO: It was June 20, I believe, of 2002.

6 MR. JOHNSON: Have we been tracking how many
7 individuals have been utilizing this yet?

8 MS. MALO: We have. As close as we can tell, we have
9 had, I believe it was, 559 individuals that have been
10 allowed benefits for domestic violence reasons.

11 MR. JOHNSON: Do we have a rough estimate of how much
12 that costs or what the dollar figure was for those 559

13 i n d i v i d u a l s?

14 MS. MALO: \$2,466,000.

15 MS. METCALF: And that included extended benefits,
16 right?

17 MS. MALO: Right. The half that we paid -- we have to
18 pay a shareable amount of extended benefits. And so that
19 included that half.

20 MR. JOHNSON: And the 559 -- this went into effect in
21 2002, so this is a two-year figure here up to present.

22 MS. MALO: Up to present, uh-huh.

23 MR. JOHNSON: And nobody before that time that the bill
24 went into effect had been allowed unemployment insurance
25 benefits due to either stalking or domestic violence,

1 correct?

2 MS. MALO: Not that I am aware of.

3 MS. METCALF: Well, it's hard to say nobody, because
4 there might have been other things along with it. But as a
5 general rule, individuals who left due to these
6 circumstances were denied benefits, but we can't say that
7 nobody was allowed.

8 MS. MALO: Isn't marital domestic possibly -- which
9 would still be a denial.

10 MS. METCALF: Right. That would have still been a
11 denial, a ten-week denial in the old days.

12 MR. JOHNSON: Okay. What is the process if an
13 individual is seeking unemployment benefits? When they go,
14 when they file for it, how do they -- is there a special
15 form that they fill out? Is there a special declaration
16 that they sign? How do they apply for the benefits under

17 the domestic violence under the statute as it is now?

18 MS. METCALF: The voluntary quit portion of it?

19 MR. JOHNSON: Yeah. How do they do that?

20 MS. METCALF: Well, they would do that during the
21 regular adjudication process, the reason for leaving work.

22 MR. JOHNSON: So if they went into an office, an
23 unemployment office -- I mean, is there a -- I can't
24 visualize the form because I haven't seen one recently with
25 the information on it. But is there a form with a block or

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1 box that you check saying, I'm leaving work because of
2 domestic violence or stalking? I mean, how do you know
3 these 559 people did that?

4 MS. MALO: Actually, normally they don't go into an

5 office. They file by telephone and on the Internet.

6 MR. JOHNSON: So they would call in.

7 MS. MALO: Right. And they would say that they quit
8 their job, for instance, so it's a voluntary quit. And then
9 when we adjudicate it and we ask them a series of questions,
10 they would identify at that time, "I left or I quit work
11 because of a domestic violence situation."

12 We have what we call an expert fact finder and we kind
13 of -- it's an intelligent, what's the word, an artificial
14 intelligence system that leads the adjudicator down the
15 path. So once someone's said it's domestic violence, then
16 there's a series of questions that we ask.

17 MR. JOHNSON: And then that's part of the record and
18 that's how you identify the 559.

19 MS. MALO: Yes.

20 MR. JOHNSON: On the adjudicator's form.

21 MS. MALO: Actually, the 559 is when we've allowed
22 benefits based on that job separation.

23 MR. JOHNSON: Right.

24 MS. MALO: Due to domestic violence.

25 MS. METCALF: And we actually have a code in the system

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1 that allows us -- a resolution code in the system, so you
2 can pull that resolution code. That's just what it's for,
3 the domestic violence allowance of benefits.

4 MR. JOHNSON: Has there been any effort by the
5 department to advertise that this is available as a way to
6 receive benefits if you have been a victim of domestic
7 violence or stalking? I mean, how do people know that they
8 can apply for unemployment benefits if they left their job

9 because of this? Because I'm assuming that a lot of people
10 that quit their jobs have no idea that they can apply for
11 it. Am I right in my guess?

12 MS. MALO: The only thing that I know of that we have
13 is in our claims kit, and that's after the fact that it says
14 that you can apply if you quit work due to domestic
15 violence. But that's what they get after they actually
16 apply. Maybe Alicia --

17 MS. CARDENAS-SHORT: I would like to add something. We
18 also have that on-line as general information in our web
19 page. It's in English and in Spanish.

20 MR. JOHNSON: So it's on the web page.

21 MS. CARDENAS-SHORT: Yes.

22 MR. JOHNSON: But if I'm a victim of domestic violence
23 and I quit my job and say, "I'm out of here," I really don't
24 have any way of knowing that this is an option unless I go

25 to the website?

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1 MS. CARDENAS-SHORT: Well, that might be in some cases.
2 However, once we have the information on-line on the web
3 pages, we have an opt-in group that we send e-mails for
4 those community-oriented organizations in hopes that they
5 will spread the word as well.

6 MR. JOHNSON: So community organizations.

7 MS. CARDENAS-SHORT: And individuals.

8 MR. JOHNSON: Has a notice been sent out to all
9 employers saying that this is a benefit that's available now
10 for all employees?

11 MS. METCALF: I don't think so.

12 MS. MALO: I don't think so.

13 MR. JOHNSON: Any plans to do that?

14 MS. METCALF: What we usually do every year, Mark, is
15 when there are law changes, we include them in the quarterly
16 newsletters that go out to employers in general. And that's
17 pretty much the way we spread the word to employers.

18 MR. JOHNSON: So in '02 they probably got notice in
19 their quarterly reports about this.

20 MS. METCALF: They should have, yes.

21 MS. MALO: Did you have a question?

22 MS. CRONE: I have one question about process again.

23 So this is not an official stakeholder hearing on the 102?

24 This is kind of a precursor to the formal meeting for

25 rule-making; is that correct?.

1 MS. MALO: Right.

2 MS. CRONE: Thank you.

3 MR. NEAS: So you're looking for input on this
4 particular section? A couple comments about this section.

5 First, on the definition of "immediate family," the
6 department's taking that definition right from the existing
7 WAC. It's always been curious to me that it excludes
8 siblings. Especially in a domestic violence context where
9 we're going to allow a claimant to leave work to care for a
10 mother, a father, a step child, et cetera, we won't allow,
11 for example, myself to leave my job to go take care of my
12 sister who is a DV victim in Omaha. So I think it's curious
13 that the sibling has been left out here.

14 So I would encourage the department to take a look at
15 that, because I know that's happened in other cases. And it
16 would be consistent with other states too that allow other

17 siblings in the context of leaving work to care for someone
18 else. I can give the department cites of at least three
19 states that I know of that allow siblings to receive
20 benefits when they're leaving work to care for an immediate
21 family member. And I would also urge the department to take
22 a look at the existing WAC that's there.

23 The second thing is that I would like to applaud the
24 department for the (c) and (d) portion of (1). The case
25 that I had that was the impetus for the legislation in

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1 Thurston County Superior Court was a woman who was
2 threatened by her husband on Thanksgiving day. She worked
3 for the University of Washington. She left that day. Her

4 husband had a long history of threatening to kill her, and
5 she left and went to California. No notice to the employer.
6 She just walked out and took her car. That's all that
7 happened. And so I applaud you for recognizing how serious
8 domestic violence can be. And that's exactly what this law
9 is supposed to do.

10 The third thing in response to the questions you were
11 getting from Mr. Johnson is the number issue. And the
12 reason I know this is a case in Thurston County was remanded
13 to an ALJ. And what the judge said is, This law that we
14 have got to work with right now isn't particular good on
15 your facts, but I will buy your argument that the claimant
16 suffered from a disability that caused her to leave work.
17 And so she was allowed benefits by the department on the
18 disability basis that the DV was so disabling that it
19 justified the need to leave work. So it has been true in
20 the past that a domestic violence survivor could get

21 benefits.

22 MS. MARANVILLE: Our clinic handled a case in which
23 benefits were awarded. As I recall, it was not on
24 disability. I have trouble remembering exactly what the
25 rationale was. It was certainly the exception. But there

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1 were some cases, so those were probably worth taking into
2 account when evaluating numbers. So it's a little -- those
3 cases would not have been tracked anyway, where benefits
4 were awarded under the old statute.

5 MS. CRONE: So we are speaking about each proposed
6 rule --

7 MS. MALO: Yes.

8 MS. CRONE: -- as we move through them. Okay.

9 Do you want to talk, David, about the "primary" and
10 other --

11 MR. WARD: Yes. Thanks.

12 I'm David Ward with the Unemployment Law Project. And
13 I have been working the project for about eight months and
14 have done a lot of work with DV victims during that time.
15 And I just want to say that we're very much appreciative to
16 the department for implementing the law so well so far.

17 I have dealt with victims before they even apply for
18 benefits. They're referred to us by social service agencies
19 and by domestic violence advocates after they have fled to
20 shelter for safety. And they will call me and say, "Well,
21 can I apply for unemployment benefits?" which they do. And
22 we give out information and tell them how the process works.

23 And I think it's saved lives. It's made a huge
24 difference. One case I did a couple months ago, I got a

25 call from a woman whose ex-partner had just been released

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1 from jail, found out where she was living, and started
2 harassing her at home and at work. She was able to quit her
3 job and move to a safer location. And the only way she was
4 able to do this economically was because she was eligible
5 for unemployment benefits. And she just had terrific things
6 to say about how sensitive the people at ESD were. So I
7 think we're just seeing a terrific job being done by ESD.

8 Having said that, I do have a couple comments on
9 proposed rules and just some unintended consequences that
10 might arise from the rules as they are now.

11 Under (2)(c) I'm just not sure if that's worded very

12 clearly. I'm not sure what that means when it says, "Your
13 separation meets the definition of domestic violence or
14 stalking..." Because the separation itself can't meet the
15 definition of domestic violence or stalking, I'm just not
16 sure what it means there.

17 MS. MALO: Right.

18 MR. WARD: So I think that can be clarified.

19 I'm going to focus, I think, on section (2)(a), which
20 says that domestic violence or stalking against you must be
21 -- I don't think it says "must be," but it says it will be
22 one factor in evaluating whether it was the primary reason
23 you left work. I don't think -- the statute itself does not
24 say that domestic violence or stalking has to be the primary
25 reason for the job separation. Instead, the law says that

1 the job separation must be necessary to protect the claimant
2 or the claimant's immediate family member from domestic
3 violence or stalking.

4 So there can be situations -- I can imagine situations
5 in which it is necessary for someone to leave their job to
6 protect themselves from domestic violence, but generally
7 it's not the primary reason for the job separation.

8 Unfortunately, when you have these cases a lot of facts
9 are dumped in. And if somebody's unhappy in their job,
10 often they are unhappy in their job because they are a
11 victim of domestic violence. They get into -- they're in a
12 highly agitated state. They don't get along well with their
13 coworkers. They get into fights at work. Their employer
14 might be mad at them for missing work, and things are
15 hostile. In may be the case that they might not have the

16 best relationship with their supervisor so it looks as
17 though they have motivation to leave their job because they
18 were unhappy.

19 And in those cases I think it's going to be very hard
20 to discern what was the primary reason for leaving work.
21 And this can get resolved, of course, in a contested
22 hearing, or the adjudicators at the front lines can take
23 statements. But I'm just not sure if it's necessary to have
24 the primary reason requirement, given that it's not in the
25 statute. I'm not sure where the basis for that comes from.

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1 And I also think there are potential situations -- and
2 again, these are more hypothetical, although I have had a
3 couple cases where we have gone through contested hearings

4 involving a DV case and not everyone is allowed benefits.
5 There are cases where they are adjudicated and not allowed
6 benefits. While I have disagreed in those cases, I do say
7 the department is doing a very fair job in adjudicating
8 these cases.

9 But in one case, for instance, the claimant was a
10 victim of domestic violence, but she was also pursuing a
11 relationship with another person. I think in my view, as a
12 means to getting out of the abusive relationship she was in,
13 she had started a relationship with someone else. So when
14 she left work, it was in my mind, due to domestic violence.
15 But she also left work to join a person she started a new
16 relationship with. In that case, I don't know how you tell
17 what the primary reason for the job separation was. The job
18 separation was necessary to help her get out of an abusive
19 situation, but at the same time an adjudicator could look at

20 this and say, "Well, the primary reason was to pursue the
21 relationship."

22 And again, I think having the "primary reason"
23 rationale in there just makes it more difficult to sort out
24 these cases, and it is not necessary to have in there. If
25 it was necessary for somebody to leave their job to protect

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1 themselves, it should not matter if they had other reasons
2 for leaving work. We want to encourage people to get out of
3 unsafe situations, and we should not really care if they
4 have other situations going on in their lives. What should
5 matter is their safety.

6 And I guess I would also like to see if it might be
7 possible to add something to the rules to address some

8 situations that I think might arise where somebody might not
9 be viewed as being the primary reason they left work. In
10 some cases victims endure abuse for many months and years,
11 and finally they reach the point where they have to leave.
12 I'm just a little worried where in some cases where somebody
13 has endured abuse for so many years an adjudicator can say,
14 "I don't see how this can be the primary reason you left.
15 You put up with it for so long."

16 And they can always explain this to the department, I
17 know. And they can explain it to an administrative law
18 judge if it gets to that point. But what if that problem
19 can be addressed by just saying something like, "to the
20 extent you will not be penalized if your job separation did
21 not occur," or "if you had endured abuse for an extended
22 period of time before your job separation," just to make it
23 clear that it's understood that the domestic violence

24 victims cannot always act immediately to remove themselves
25 from abusive situations. There are strong reasons why they

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1 don't leave abusers immediately.

2 One other thing that is of slight concern or some
3 concern to me is, In some cases we have seen the most recent
4 act of domestic violence or stalking is somewhat removed in
5 time from the job separation. I think that's addressed here
6 somewhat by saying you are not penalized for providing
7 several weeks of notice, which I think it's great to have a
8 provision like that in there.

9 I would like to see -- I don't know if having a time
10 period is necessary, but if you just indicate "providing
11 notice before you are making preparations to leave."

12 Because sometimes it will take more than several weeks for
13 someone to make preparations to get out of an abusive
14 situation.

15 And just because somebody hasn't been a victim of
16 domestic violence or stalking, you know, in the month before
17 the job separation or the three months before the job
18 separation doesn't mean they're not at risk for future
19 violence. Domestic violence tends to be episodic. There
20 tend to be periods where they're abused, and then there's
21 reconciliation. And then the victim thinks that
22 everything's gotten better, only to have the violence
23 resume.

24 So I think it might be good to have something in the
25 rules that just says, "You will not be penalized in cases

1 where there is not a recent act of domestic violence or
2 stalking as long as you show that it was necessary for you
3 to leave your job in order to protect yourself."

4 I may not be wording that as nicely. We will be
5 submitting written comments.

6 MS. MALO: Okay.

7 MR. WARD: Those are just some of my thoughts. Again,
8 I think the law has been implemented very well so far. I
9 think the word has gotten out to victims. And I think the
10 reason we're seeing this many claims is because there is a
11 huge need for it and because we have a strong coalition in
12 Washington that gets the word out to victims and let's them
13 know that they have this resource. And it's just been
14 invaluable.

15 MS. MALO: Thank you.

16 Okay, Mark.

17 MR. JOHNSON: Just a couple more clarification
18 questions. As I understand the law, when there's a claim
19 allowed, it's charged social charges; it's not charged back
20 to the employer, correct?

21 MS. MALO: Correct.

22 MR. JOHNSON: I'm just concerned. And let me just walk
23 you through an example that's going through my mind. My
24 average member has six or fewer employees. They're just
25 small. Now, there is no exemption for size in here,

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1 correct?

2 MS. MALO: Right.

3 MR. JOHNSON: It's all employers, regardless of number
4 of employees.

5 MS. MALO: Right.

6 MR. JOHNSON: So if somebody's unfortunate enough to be
7 a stalking victim or domestic violence victim or potential
8 victim, and let's say that she decides that she's got to get
9 out of there to prevent any kind of abuse or harm. So one
10 day the business owner comes in. They've got six employees
11 and one's gone. They don't know where she went. She left
12 the state, left town, whatever. I'm just concerned. What
13 is that employer going to start thinking? What is that
14 employer going to start doing? Are they going to call the
15 police and file a missing person's report? Are they going
16 to call the person's home?

17 I just see some real problems for that individual at
18 probably, you know, wondering where that employee has gone.
19 If it's a Boeing corporation, it's probably not such a big

20 problem for them because they have all sorts of divisions.
21 But when you know everybody by name and you have a specific
22 job, you get really concerned. Because it's like part of
23 your family and -- you know, where's my receptionist? She's
24 gone. What happened to her? She didn't call. How do they
25 find out that this is what has happened? I'm worried about

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1 that.

2 My second area of concern or worry is following up
3 with, Are there any safeguards to prevent any kind of abuses
4 by the system taking place by an individual? Are there any
5 protections in place that are in there?

6 And I know this is probably pretty rare, but if an

7 individual decides, "Boy, I want to go on a trip for six
8 months. I want to go down to California and live in the
9 'Baha' for six months, so I'm just going to take off, and
10 I'll call and get my unemployment insurance benefits." I'm
11 sure that doesn't happen often. But are there any
12 safeguards, or how do we prevent something like this from
13 taking place?

14 MS. MALO: I don't believe there are any safeguards,
15 other than we try to ask enough questions and pinpoint them
16 with our exact fact finder to solicit the information so
17 that we'll make a good decision. And, you know, we also ask
18 employers if they've noticed any kind of history, and I
19 understand maybe they don't. And in a lot of cases, the
20 employer won't know. But we've tried to just follow step by
21 step to solicit enough information so that we can make that
22 decision, so that we can try to pinpoint the reason that
23 they left and why they left when they did. So we try to get

24 all of that information. We give them the benefit of the
25 doubt, and we do that with all our job separations.

24

1 So you know, I don't know what to say other than that,
2 actually.

3 MS. HARRIS: If I may?

4 MS. MALO: Go ahead.

5 MS. HARRIS: Employers are notified when a person makes
6 an application. They receive a notice that this application
7 has been made, and the reason is given to say why they're
8 filling.

9 MR. JOHNSON: What's the turnaround time, roughly,
10 around that? Is there a requirement?

11 MS. HARRIS: Yeah, there is.

12 MS. MALO: Ten days.

13 MR. JOHNSON: Ten days after the filing, the employer's
14 notified by a call or --

15 MS. MALO: No. They're notified by paper in writing.

16 And they have ten days to respond once we mail that notice.

17 And it's basically a notice that a claim's been filed.

18 And then it also has the reason for the job separation, what
19 the individual gave to us as a reason.

20 MR. JOHNSON: Just so I can gauge the size, 559 claims
21 in two years. And we have how many overall claims per year,
22 would you roughly say? You don't have to be exact.

23 MS. METCALF: Our claims load has dropped. And I can
24 tell you we have about 110,000 weekly claims filed right
25 now.

1 MR. JOHNSON: 110,000 per week.

2 MS. METCALF: Per week. Those are the ones who have
3 already filed the claim, and they're filing weekly claims.
4 I can give you the exact number of claims we've had in the
5 last two years.

6 MR. JOHNSON: I'm just trying to get a rough idea of
7 how large a percentage 559 is. I assume it's very small.

8 MS. METCALF: It's very small.

9 MS. MALO: It's small. We did it based on -- what we
10 looked at is the monies, with it like .14 percent of
11 1 percent of the claimants.

12 MS. METCALF: .0014.

13 MR. JOHNSON: .014 of all claimants?

14 MS. HARRIS: Two zeros.

15 MS. METCALF: Two zeros.

16 MS. HARRIS: .0014.

17 MR. JOHNSON: .0014 of all claimants for year-end?

18 MS. HARRIS: Yes.

19 MS. MALO: Maybe that was from when the bill was signed
20 and was implemented.

21 MS. HARRIS: Yes.

22 MS. MALO: Yeah. It may have been for two years.

23 MR. JOHNSON: Just to wrap up real quickly and just my
24 concerns, I don't know, I don't have a good solution how to
25 get -- probably most employers, I would say most in general,

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1 98, 99 percent of them care about their employees very much,
2 and they don't want to see anything bad happen to them. If

3 they know there's a problem, they want to help them out,
4 especially in unfortunate circumstances like this. And how
5 do we get at that? I'm not quite sure I have a solution for
6 you.

7 MS. MALO: Thank you.

8 MS. CRONE: If you don't mind, I think I will respond
9 just briefly to Mark.

10 I mean, I would think, and of course this is only
11 anecdotal, but in must circumstances the employer is going
12 to be aware of domestic violence, and just because notice
13 isn't required doesn't mean that it doesn't happen. So
14 we're talking about .0014 percent of all claimants. We're
15 probably talking about an even more significant minority of
16 people who have taken advantage of legislation and not
17 spoken with the employer, where the employer wouldn't have
18 any kind of awareness.

19 But I really appreciate your concern about an employer
20 who might be concerned about an employee and just what
21 should an employer do in those circumstances. I don't know
22 that that's really something that can happen in this
23 rule-making process.

24 I would just also like to ditto what David said. You
25 know, first of all, I applaud the department in its efforts

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1 of legislation. I have been very pleased with the way this
2 has happened. And it's both shocking and very gratifying
3 that so many victims of domestic violence have been extended
4 this economic lifeline when forced to leave their jobs and
5 have this opportunity to get safe. That's just -- that's
6 just amazing and wonderful. And I want to thank you in your

7 efforts in making this happen.

8 For the most part, I don't know that the legislation
9 needs that much interpretation. Of course, to the folks who
10 worked on that draft, it just always seems perfectly clear.
11 So certainly any efforts to interpret or explain, I think,
12 are fine, but to the extent that they might constrict or
13 narrow what the legislation is providing for, is definitely
14 concerning.

15 And the law center and the coalition both do have some
16 concerns. One has been addressed by David on the "primary."
17 And I don't want to go back over and say the same thing he
18 said. But I might also add that in terms of "primary,"
19 oftentimes when an individual is claiming benefits, they're
20 not going to claim potentially, initially on the basis of
21 domestic violence. It's not the most socially acceptable
22 thing to talk about. And certainly making a claim for

23 benefits, the perpetrator could be threatening the victim in
24 terms of leaving the job or making a claim for benefits. So
25 there could be lots of reasons why he or she might identify

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1 some other reason for leaving the job.

2 So to the extent that this record is being created at
3 the department level and then that it might be used later,
4 there is, then, potentially a longer adjudication and an
5 appeals process, and that could be used against her. "Well,
6 that's not what you said initially, or "You seemed to have
7 left for these other reasons." We find that really
8 concerning and that it should be enough to say and do
9 fact-finding on whether it's necessary.

10 So I think those are the only rules. That's all we've

11 covered so far; is that right?

12 MS. MALO: Yes.

13 MS. CRONE: So I'll stop at that point for now.

14 MS. STOHL: I just want to say something on behalf of
15 the coalition. I work on the Economic Justice Project,
16 which is the part of the coalition, and we really have found
17 that victims tell us the primary reason that they don't
18 leave is either economic security or their fear of economic
19 instability. So this law really helps them by giving them
20 that lifeline if they do leave.

21 And we've heard really great success stories from our
22 advocates from member-based organizations of all the
23 domestic violence providers across the state. And they tell
24 us that victims are really thankful for this. And they seem
25 to be getting the word out as David said. And we just think

1 it is so fantastic. And we would really urge that it is not
2 constricted any more for those reasons that Pam said.

3 But we have heard that this is saving lives. And I
4 just want to reiterate that. I don't want to be too
5 redundant, but it is really a great thing for people across
6 the state.

7 MR. JOHNSON: One request for information. Do you have
8 the series of questions that the adjudicators ask? Is that
9 something I can get a copy of?

10 MS. MALO: I do. We can get you a copy of it.

11 MR. JOHNSON: E-mail, mail, whatever.

12 MS. MALO: I may have to mail it, because we printed it
13 out from the system.

14 MR. JOHNSON: That would be great. Thanks.

15 MS. MALO: Sure.

16 Okay. The next --

17 MS. CRONE: I'm sorry. Did we do "necessary"?

18 MS. MALO: We didn't do "necessary." It's under 2(b).

19 And it says, "Your separation was 'necessary'..." And we
20 have a definition for "necessary" that is in the final
21 process of being adopted right now. And it says "necessary"
22 means, "...the conditions are of such degree or severity in
23 relation to your particular circumstances that they would
24 cause a reasonably prudent person acting under similar
25 circumstances to quit work." And I can give you the WAC

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1 number if you would like.

2 MS. CRONE: Can I just ask for clarification? So what
3 do you mean it's on the way to being adopted? Is it
4 different from the rest of this?

5 MS. MALO: It's under --

6 MS. HARRIS: It's 6097.

7 MS. CRONE: It's the general --

8 MS. MALO: Yes.

9 MS. CRONE: And so this is the general "necessary" for
10 the other good cause separations.

11 MS. MALO: Yes.

12 MS. CRONE: And what's that WAC number?

13 MS. MALO: It's 192-150-055(4)(c).

14 MS. CRONE: And could you tell us where it is in the
15 process in terms of stakeholder involvement and opportunity
16 for comment?

17 MS. HARRIS: We just had our final formal hearing for
18 6097.

19 MS. CRONE: Okay. All right.

20 MR. WARD: I would like to make a couple comments on
21 "necessary." The definition of "necessary" here is
22 basically being borrowed from the definition of "necessary"
23 that's being used in cases of separations due to illness and
24 disability.

25 MS. MALO: All other job separations, correct.

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1 MR. WARD: But the term "necessary" appears in the
2 statute for good cause quits, I believe, in two places. I
3 think one is for illness and one is for domestic violence
4 victims.

5 MS. MALO: Right.

6 MR. WARD: And I think the impetus for the "necessary"
7 definition was the fact that in 2003 the Illness and
8 Disability section was modified from being -- they had
9 included the term "necessary" for the first time. They had
10 "necessitated," or something, before.

11 So this definition arises from the Illness and
12 Disability section. And I think it sort of reflects the
13 fact that in cases where someone quits due to illness or
14 disability of a family member or themselves, I think this is
15 a reasonable definition of the term "necessary." You are
16 going to want to know that conditions are severe enough and
17 to such degree -- if your kid has the measles, that's
18 probably not a sufficient reason. That's not a degree of
19 severity. But if your mom has Alzheimer's, that may be
20 different.

21 I don't know if that definition translates well to a
22 situation where you're dealing with domestic violence

23 victims. Because when you use terms like "degree" or
24 "severity," that's going to leave the door open for someone
25 to say, "Well, the abuse wasn't that bad."

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1 And we have basically in the state a zero tolerance for
2 domestic violence. We don't generally say that it's okay
3 for somebody to be hit by a family member, to be pushed by a
4 family member, to do anything that means the statutory
5 definition of domestic violence.

6 I'm a little concerned that using the terms "degree"
7 and "severity" will lead adjudicators to say, "Well, you
8 might have been a domestic violence victim, but it was just
9 shoving. It was just a couple times." And, you know,

10 obviously there's a vast difference between what people
11 suffer in terms of domestic violence.

12 But generally, if somebody meets the statutory
13 definition of domestic violence under 26.50, that's all they
14 have to really satisfy under the terms of the statute. They
15 don't have to show that they are in such life-threatening
16 peril that they had to leave their job. It should just be
17 enough that they had to get away from somebody that was
18 abusing them, whether the abuse took the form of slapping --
19 you know, some people might -- an adjudicator might not
20 agree. "Oh, you got slapped a few times 'N-heh.'" I don't
21 know how you can say that in the transcript.

22 I just don't know if it's necessary to have those terms
23 in there because I think it might lead to problems down the
24 road.

25 MS. CRONE: We strongly would urge you not to use the

1 definition for "necessary" that is a part of 6097 to define
2 "necessary" to interpret this particular provision allowing
3 benefits to victims of domestic violence and stalking. It's
4 really extremely problematic.

5 One of the things that we're really concerned about
6 that David spoke about would be the really inconsistent
7 interpretations and readings this particular definition will
8 give, in particular, this "degree of severity" and "a
9 reasonably prudent person." You are going to have an
10 adjudicator and then potentially an appeals judge,
11 administrative law judge, and a commissioner, assistant
12 commissioner, and then potentially a superior court judge,
13 and depending on their varying levels of understanding of

14 domestic violence, they are going to be all over the road
15 map. Frankly, we're finding that the adjudicators and the
16 frontline staff in the state have a far better understanding
17 of the dynamics of domestic violence than what we're seeing
18 at other levels of the process. So that is really
19 concerning.

20 And I can tell you, having participated in the whole
21 process in moving this legislation and so much of what we've
22 talked about, if you go back and look at floor speeches in
23 the legislature, we've talked about how it is the victim who
24 must make the ultimate decision as to when it is that she
25 needs to go. There are any number of reasons why it would

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1 be necessary at one point and not necessary at another. If

2 it is a domestic violence situation, who is going to know
3 that intimate partner any better than the victim of domestic
4 violence in terms of knowing what that perpetrator is
5 capable of? There could be a situation where someone does,
6 indeed, wait to go, and it's just because she's getting all
7 of her ducks in a row. She's made her safety plan and now
8 it's safe going. It kind of goes to "primary," but there's
9 some interconnection. But it's, I think, still distinct.

10 And certainly as we said with "primary," she could be
11 in the situation where she's threatened. We also know that
12 violence actually escalates at the point where the victim
13 tries to separate. Now, over time that lessens, and that's
14 a good thing. But right at that moment when she's leaving,
15 that is an extremely precarious time. And that was one of
16 the reasons why we were so strong and emphatic about not
17 requiring a police report or that there be a protection

18 order because it would actually increase the risk.

19 We have some language, and we're all planning on
20 providing written comments, but I can give you an idea of
21 what that might look like, something that we think that will
22 work to help inform "necessary." And it would be a
23 subjective standard that the separation was necessary due to
24 the fear of domestic violence or stalking against yourself
25 or immediate family member to avoid domestic violence or

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1 stalking against yourself or your immediate family member
2 and then was necessary due to the circumstances surrounding
3 domestic violence or stalking, including but not limited to
4 a number of factors. And we can provide that to you in
5 writing.

6 So just in summary and conclusion for my part, when the
7 legislation was being contemplated and we were thinking
8 about "necessary" and everybody else was thinking about
9 "necessary," we never contemplated such a narrow definition
10 for "necessary." And it's wholly inappropriate to apply it
11 to this particular provision of the statute.

12 MR. WARD: One question too. The US circular that went
13 out in June of 2002 after the legislation was implemented
14 stated that the prudent person test is not considered when
15 adjudicating claims under the new statute. I was just
16 curious why that's changed now under the new rules.

17 MS. MALO: I'm trying to think. I think we were
18 getting at that they didn't have to try to preserve their
19 employment by saying the prudent person test was not
20 something that we would consider. And we've identified that
21 in this they wouldn't be required to exhaust reasonable

22 alternatives. So my recollection is that's what we were
23 trying to do so you didn't have to attempt to preserve your
24 employment.

25 MR. WARD: Okay. Because the circular said, "The

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1 prudent person test is not considered when adjudicating
2 determinations pursuant to RCW, "whatever, "50.20.050.
3 Additionally, individuals are not required to attempt to
4 preserve their employment prior to leaving when the reason
5 given is voluntarily leaving due to domestic violence or
6 stalking."

7 MS. MALO: Oh.

8 MR. WARD: It's suggested that the prudent person test
9 wouldn't be used in evaluating whether the job separation

10 was necessary, instead that you would use a subjective test
11 and put yourself in the shoes of the victim. So I was just
12 curious about that.

13 MS. MALO: Right. Gosh, I can't remember. It's been a
14 while. Can we get back to you?

15 MR. NEAS: I would also echo what Mrs. Crone and
16 Mr. Ward said about the "necessary" and the need to look at
17 a good faith subjective view of the victim as opposed to a
18 reasonably prudent person test and the severity language
19 too. I would urge you to exclude that and adopt something
20 different.

21 MS. MALO: Thank you. We will consider that.

22 And I apologize, we did have included in this same WAC
23 on the next page the definitions that we took from RCW 26.50
24 and 9A.46. We included these because we didn't want the
25 individuals to have to go into the other titles in order to

1 make their decisions when they're adjudicating these cases.
2 So we've included some of these definitions as well in this
3 WAC. These are already in statute, or do you want to
4 discuss those? But that's for your review, and we did
5 include them.

6 The next one is a new section, and it's, Suitable work
7 factors for domestic violence or stalking and it's WAC
8 192-170. And basically, it's suitable work that's in
9 keeping with your prior experience, employment, or training.
10 And what we've added to this is the last bit that you see on
11 the first page or on page 2, that suitability must include
12 consideration for the need to address their physical,
13 psychological, and legal effects of the domestic violence or

14 stalking. And so we would use that when we consider the
15 suitability of the work. And this primarily would be like
16 if they refused to work for an employer because of this
17 situation.

18 And (2) is, "To be considered available for suitable
19 work you must demonstrate an attachment to the labor
20 market..." So those were the changes that we made on this
21 new WAC that we are proposing.

22 So do you have comments on that one?

23 Yes, Mark.

24 MR. JOHNSON: Just a clarification. What is
25 "demonstrating an attachment"?

1 MS. MALO: The (2) -- well, we have had some discussion
2 since we wrote this, and we're not sure that we're clear on
3 that. It's kind of out there. So we've had someone ask us
4 about that today and we thought, "Oh, that doesn't make a
5 whole lot of sense."

6 They would demonstrate that they are seeking work by
7 responding that, yes, in fact, they are able and available
8 and actively seeking work when they certify for benefits.
9 So that's how they'll demonstrate their availability, just
10 like anybody else.

11 So these individuals, we won't bring them in for job
12 search monitoring to review their work search. They're
13 excluded or exempted from their job search review. They
14 could be called in for some of our workshops that we have at
15 the work source office that would assist them with looking
16 for work. But we may delete that (2) because I'm not sure
17 if that makes a lot of sense.

18 Comments?

19 MS. CRONE: Yeah. It seems unnecessary, perhaps. I
20 mean, the same requirements exist in terms of certifying
21 that you're looking for work as exist for other claimants in
22 terms of that certification, so that may just be redundant.

23 MS. MALO: That's what we're thinking too. You picked
24 up on that, huh?

25 Other comments?

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1 Okay. And the other WAC that we're amending, WAC
2 192-180-010, which is the job search requirements
3 directives. And that if they're allowed benefits based on
4 the domestic violence situation and the job separation,

5 they're required to be attached to the labor market, but
6 they're only required to make a minimum of one contact per
7 week while they're getting themselves prepared to get back
8 in the job search and in the labor market. So we've
9 identified that they have to have one job search contact.

10 So that's the only change we made when we amended that
11 section.

12 Yes, Debbie.

13 MS. MARANVILLE: I do have a comment on this section.
14 It seems to me that this should be a case-by-case
15 adjudication. In most circumstances an individual will, of
16 course, be making at least one job contact a week. But one
17 can certainly envision circumstances in which the process of
18 getting resettled means that this week there will be no job
19 contacts but others have been made the previous week, the
20 next week. So I would suggest that this should be left for
21 a case-by-case determination in accordance with the

22 ci rcumstances.

23 MS. MALO: Okay. Thank you.

24 MR. NEAS: I would agree with that too. I was confused
25 by the language with the first sentence and the second

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1 sentence seeming to be inconsistent. Because in one case we
2 say you must make the number of job search contacts
3 consistent with your need to address domestic violence, and
4 then we go, however, you must do at least one. It seems
5 that it could be consistent with your need that you not do
6 any. So I thought that this section was inconsistent.

7 MS. MALO: I see what you're saying. So we will
8 certainly consider that.

9 Okay. That's all we have on this, if you don't have
10 any other comments, additional comments.

11 MR. JOHNSON: Could you go over the process again? I
12 know there's another one in Seattle. Will that be the end
13 of the public comment period?

14 MS. MALO: Yes, yes. If they're -- well, Cheryl's
15 going to go over that with you, what we'll do from here.

16 MS. METCALF: What we'll do is give you until August
17 the 20th to give us any written comments you want to submit.
18 And Karen has cards there. You can either mail them or
19 e-mail them, either way.

20 There's another hearing just like this one in Seattle
21 next Tuesday, 10:00 to 12:00. Someone, possibly Marcie,
22 will be there doing a recording like this.

23 Then when we get the transcripts, all the information
24 on the transcripts and all the written comments will be
25 taken into consideration. Every single one of them is

1 looked at. They're all important. We appreciate every
2 single one.

3 And based on all of that information, then we determine
4 what's next. Can we go straight to a rules hearing? Can we
5 put out proposed rules and have the real hearing, or is
6 there enough agreement or concern that we need to have
7 another set of meetings prior to the official rules hearing?

8 So you'll all be notified of that. Karen and Susan
9 will put together the comments.

10 And don't you usually send something out with the
11 comments?

12 MS. HARRIS: That's usually at the very, very end.

13 MS. METCALF: Toward the end, yeah.

14 But everybody that's signed in today will be on the
15 list of all the information that goes out from now on for
16 anything that's scheduled. And you will be included in all
17 of that.

18 And until we get all the comments from this first round
19 we can't determine what's next. Like today you gave us some
20 interesting things to think about and some changes will no
21 doubt come. And depending on what we hear on Tuesday and
22 what we see in writing, whether it reaches the level where
23 we have to go through another set of meetings, I don't know
24 yet. We will just have to wait and see. And we will
25 certainly let you know. Thank you.

1 MS. MALO: Thank you.

2 MS. METCALF: We appreciate everything you have given
3 us today.

4 (Whereupon, at 3:55 p.m.,
the proceedings concluded.)

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4 County of Ki tsap) ss.

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6 I, Marcie L. Johnson, a Certified Court Reporter in and
7 for the State of Washington, do hereby certify:

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foregoing transcript were done and completed to the best of
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12 That I am not a relative, employee, attorney or counsel
13 of any party to this matter, and that I am not financially
interested in said matter or the outcome thereof;

14 IN WITNESS WHEREOF, I have hereunto set my hand and
15 affixed my official seal on this 17th day of August, 2004,
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